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were engaged in hostilities each could rely on the support of the other sections of the same tribe; but, in practice, they would often only join in if the other side was receiving assistance from neighbouring sections. When a tribe united for warfare there was a truce to disputes within its borders.

Tribes, especially the smaller ones, often united to raid foreigners. The Leek united with the Jagei and Western Jikany, and the Lou with the Gaawar to attack the Dinka; the Lou with the Eastern Jikany tribes to attack the Anuak; and so on. These military alliances between tribes, often under the aegis of a Sky-god, speaking through his prophet (p. 188), were of short duration, there was no moral obligation to form them, and, though action was concerted, each tribe fought separately under its own leaders and lived in separate camps in enemy country.

Fighting between Nuer of different tribes was of a different character from fighting between Nuer and Dinka. Inter-tribal fighting was considered fiercer and more perilous, but it was subject to certain conventions: women and children were not molested, huts and byres were not destroyed, and captives were not taken. Also, other Nuer were not considered natural prey, as were the Dinka.

Another defining characteristic of a tribe is that within it there is *cut*, blood-wealth paid in compensation for homicide, and Nuer explain the tribal value in terms of it. Thus Lou tribesmen say that among themselves there is blood-wealth, but not between themselves and the Gaajok or the Gaawar; and this is the invariable definition of tribal allegiance in every part of Nuerland. Between tribesmen there is also *rwok*, compensation for torts other than homicide, though the obligation to pay it is less generally stressed or carried out, while between one tribe and another no such obligation is acknowledged. We may therefore say that there is law, in the limited and relative sense defined in Chapter IV, between tribesmen, but no law between tribes. If a man commits an offence against a fellow tribesman he places himself and his kin in a legal position towards this man and his kin, and the hostile relations that ensue can be broken down by payment of cattle. If a man commits the same act against a man of another tribe no breach of law is recognized, no obligation is felt to settle the dispute, and there is no

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machinery to conclude it. Local communities have been classed as tribes or tribal segments by whether they acknowledge the obligation to pay blood-wealth or not. Thus the Gun and the Mor are classed as primary segments of the Lou tribe, while the Eastern Gaajok, Gaajak, and Gaagwang have been classed as three tribes and not as three primary segments of a single Jikany tribe.

It may have happened that border cases between different tribes were sometimes settled by payment of compensation, but I have no record of such settlements other than the doubtful statement given on p. 189, and were they to have taken place it would in no way invalidate our definition of tribal structure. However, it must be understood that we are defining a tribe in the most formal way and that, as we shall show later, the acknowledgement of legal responsibility within a tribe does not mean that, in fact, it is easy to obtain compensation for a tort. There is little solidarity within a tribe and feuds are frequent and of long duration. Indeed, the feud is a characteristic institution of tribal organization.

A tribe has been defined by (1) a common and distinct name; (2) a common sentiment; (3) a common and distinct territory; (4) a moral obligation to unite in war; and (5) a moral obligation to settle feuds and other disputes by arbitration. To these five points can be added three further characteristics, which are discussed later: (6) a tribe is a segmented structure and there is opposition between its segments; (7) within each tribe there is a dominant clan and the relation between the lineage structure of this clan and the territorial system of the tribe is of great structural importance; (8) a tribe is a unit in a system of tribes; and (9) age-sets are organized tribally.

## VII

Adjacent tribes are opposed to one another and fight one another. They sometimes combine against Dinka, but such combinations are loose and temporary federations for a specific end and do not correspond to any clear political value. Occasionally a tribe will allow a section of another to camp in its territory and there may be more contacts between persons of border villages or camps of different tribes than between widely sepa-

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he should be a 'chief'. It does not follow that a man must be an aristocrat to gain influence among his fellow villagers. He may be a *tut* of some other lineage than the dominant one of his tribe who, by outstanding character, has been able to establish himself and his kin as social leaders in his locality.

There is thus in every tribe some differentiation of status, but the people so differentiated do not constitute classes, and 'strangers' and 'Dinka' are properly to be regarded as categories rather than as groups. Their relation to the aristocrats in the tribal system and the ways in which the different elements are integrated into communities will engage our attention in later sections.

## VII

It is only in assessment of blood-cattle that social differentiation between aristocrats and Nuer strangers is of great significance, and then only among the Jikany tribes, principally among the Eastern Jikany. Among the Eastern Jikany the kinsmen of a *dil*, aristocrat, who was killed had to be compensated by payment of more cattle than the kinsmen of a slain *rul*, stranger, or *jaang*, Dinka. It is not easy to know to what extent this privilege could be enforced, or even to discover the relative assessments of blood-cattle. There was undoubtedly considerable elasticity in reckoning who counted as equivalent to a *dil* in situations of homicide and variation in the number of cattle paid for homicide. It was asserted by several informants that in pre-government days a true Nuer, called in the Jikany tribes a *gat Gaaka*, counted the same as a *dil* Jikany for purposes of assessing blood-cattle, and I was given the following blood-cattle assessments: a Jikany aristocrat, 40, a Nuer stranger, 40, a Dinka adopted by a Jikany aristocrat, 20, a Dinka who had been adopted by a Nuer stranger, 20, and an unadopted Dinka, 6. In more recent practice the following payments seem to have been regarded as usual: a Jikany aristocrat, 20, a Nuer stranger, 17, a Dinka who has settled permanently in the country, 16, a Dinka who has not been long settled, 10.

I was not long enough among the Eastern Jikany to investigate this matter thoroughly, but I received the impression that the second list was coloured in its variation of assessment, as it was certainly influenced in amounts of assessment, by recent Government decisions; though the informants who gave it insisted that it was in proportion to the ancient assessments. Aristocrats assured me that in the past more cattle were always paid for the homicide of an aristocrat than for that of a Nuer stranger. Members

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of Nuer clans, other than the GAATGANEER, who have settled in Jikany tribes equally assured me that the payments were the same for both. No doubt they were both hoping to influence Government practice by their statements. On the whole, I consider that among the Eastern Jikany there was probably a difference between payments for homicide of an aristocrat and of a stranger, but that there was much flexibility in the assessments, which depended generally on the special circumstances of each case: the length of the dead man's residence in the country, marriage alliances between his family and aristocratic lineages, the strength of his lineage and local community, whether he had been killed by a member of his village or by a man of another village, and so forth. Probably the same is true of the Western Jikany tribes, where I was told that the customary compensation for an aristocrat was from 40 to 50 head of cattle, for a stranger or Dinka who had settled in the country, 30, and for a Dinka who was staying there but had not yet built a homestead, 20. The practice of the Jikany is not typical of Nuerland as a whole.

Nevertheless, all over Nuerland Nuer and Dinka were differentiated by assessment of their value in blood-cattle, though the definition of a Dinka, in this respect, varied in different tribes. Among the Lou the practice was to reckon aristocrats and strangers together at 40 head of cattle. A Dinka who was born in Lou country was said to have become a Nuer (*caa nath*) and a member of the community in which he was living (*caa ran wec*), so that his life also was assessed at 40 head of cattle. On the other hand, a Dinka who had been captured in war and brought to Lou country was reckoned at 16 head of cattle, while a Dinka visiting relatives or affines in Lou country was reckoned at only 6 head of cattle. I was told that a Dinka who had been adopted held an inferior position in this respect to that held by his children, who counted as true Nuer. In the Jagei tribes Nuer strangers and Dinka who were permanent members of a community appear to have been reckoned at 40 head of cattle, like an aristocrat, while a stranger or a Dinka who had not built a byre was reckoned at only 10.

The building of a byre was stressed because a man who built a homestead in a village had clearly the intention of remaining there and the community gained by an addition to its herd. Such a man seems to have been reckoned equal to an aristocrat in all parts of Nuerland, except among the

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Jikany where, I was told, a Dinka could never lose his inferior status, which was transmitted to his descendants. The acceptance of a permanent member of a community as equal to an aristocrat conforms to the general tendency among the Nuer for descent to be subordinated to community, a tendency which we shall constantly stress.

We again emphasize the point to which we drew attention in the section on law, that the degree of responsibility acknowledged for a tort, the chances of compensation being offered for it, and the amount of compensation paid, depend on the relations of the persons concerned in social structure. Thus, if a man kills an unadopted Dinka of his own household, who was not born in Nuerland, there is no redress, but his household will protect their Dinka against outsiders and will avenge his death at their hands. Deil, who is himself of Dinka descent, told me: 'If you curse a Dinka of your household, well, you curse him, that is all. If he is angry you tell him that you will kill him and that nothing will happen. You will merely clean your spear on the ground and hang it up. But if another man curses a Dinka of your household you fight him, for the Dinka is your brother. You ask the man whether he is your Dinka or his Dinka.'

The position of a Dinka in his own domestic circle is thus different from his position in relation to members of a wider group. He is only a *jaang* to the joint family which considers him 'their man.' To people standing outside this joint family he is a member of that *gol*, joint family, and it is not their business to differentiate his status within it. I was told that if an outsider called such a Dinka '*jaang*', the sons of the man who had captured him would resent the insult and might start a fight to wipe it out, for to them he is '*dwar*', 'my brother', in relation to outsiders. They ask, 'Who is a *jaang*? Did your father seize him or did ours?' The acceptance of Dinka born in Nuerland as full members of Nuer households, hamlets, and villages is even more pronounced.

The status of Dinka is thus a relative one, and a man may be considered to belong to this category in one situation and not in another. This is obviously the case in social life generally, because ordinarily no one differentiates a man of Dinka descent from a man of Nuer descent, but we believe that it was also the

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case in questions of homicide, since the social situation was composed of the structural relations of the slayer and his kin to the dead man and to other people concerned in the dispute. In our opinion the uncertainty and contradiction which was often evident in the statements of Nuer about assessments of blood-cattle is to be accounted for by relativity of status, it being relative always to the structural distance between persons, and therefore not rigidly definable.

Likewise *rul* is a very plastic concept. If a Leek man goes to Gaajak country to steal cattle and is killed no compensation would be paid for the homicide. A Leek man travelling through Gaajak country without intent to cause loss to its owners would not wantonly be slain. If the man were visiting kinsmen or affines and was killed in a quarrel, his hosts would consider that they were under an obligation to avenge him, though, perhaps, not under a very strong obligation. But a Leek man who has built his homestead in Gaajak country and has married into the village where he resides is a member of that community. If another member of his village kills him, it may be held that he is a *rul* and therefore his death may be paid for with fewer cattle than that of an aristocrat. But if a member of another village kills him, his community are not likely to accept this definition of status, because one does not differentiate between members of one's community on grounds of descent in its relation with other political segments. In political relations community ties are always dominant and determine behaviour.

## VIII

We have observed that within a tribe there are three categories of persons: *diel*, *rul*, and *jaang*. The *diel* are an aristocratic clan, numerically swamped in the tribe by strangers and Dinka, but providing a lineage structure on which the tribal organization is built up. The problem is how strangers and Dinka are attached to the dominant clan in such a way that the clan becomes, through the relations of other members of the tribe to it, the framework of the political system. As Nuer reckon all social ties in a kinship idiom it is clear that only the recognition of mutual bonds of kinship could lead to this result. Such recognition is accorded in several ways. We will start by

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583 602 613 that 'ciewg Pual have married a wife', or that 'ciewg Dumien have given their daughter in marriage'.

To understand the functions of bridewealth in Nuer society it is therefore necessary to view its payment in a wider social setting than is provided by any particular marriage. It is necessary to see it, as Nuer themselves do, as a series of transactions, and to perceive furthermore in an exchange of cattle for a wife an exchange 583 of a daughter for a wife. Bridewealth may be fruitfully compared 681 from this point of view with bloodwealth, the payment of cattle in compensation for homicide. This is forty head of cattle, the same number as is paid for a bride, and the cattle are divided among the kinsmen of the dead man on the same plan of distribution as that obtaining in the distribution of bridewealth, though about half are reserved for marrying a wife to the name of the dead man to bear him a son. As bridewealth enables a woman to be replaced by a woman so bloodwealth enables a man to be replaced by a man. It is worthy of note that the rate of bloodwealth has fallen in recent times to about the same level as the rate of bridewealth. Nuer see the similarity between them, for I have heard them complain that the government was attempting to fix bloodwealth without fixing bridewealth at the same rate, whereas what the one is the other should be.

583 613 To see the Nuer custom of bridewealth in its structural perspective we must therefore think in terms of lineages. Children are attached by payment of bridewealth to the lineage of their father. They are 'children of the cattle' and therefore of the man in whose name they were paid, and they become joints in his branch of descent. The man in whose name the cattle were paid is always their pater, the legal or lineage father, whether he is their genitor or not. If he dies, the widow should be taken by one of her 'husbands' and the 'fathers' of his sons, that is to say, by one of his brothers. But even should a widow decline to cohabit with one of her husband's paternal kin and prefer to live as a concubine with some man unrelated to her dead husband, any children she may bear are his children. Every child must have a pater or, which is saying the same thing among the Nuer, belong to a lineage, and if an unmarried woman has a child it is legitimatized either by subsequent payment of bridewealth or by payment of a fee.

583 The two most important functions of bridewealth in Nuer society appear to me, therefore, to be its role in creating new social

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593 *kur wutni*, fighting with men. Also, a Nuer woman—a Dinka captive is not in so favourable a position—who readily accepts admonishment and correction for faults, would not submit to bullying but would return to her parents and brothers, leaving her husband without cook, dairymaid, and nurse, and therefore unable to maintain his home; and he might find it difficult to persuade her to return. If she does return it will only be after lengthy discussions in her parents' home and, as he is likely to have said something unpleasant about them in altercations with his wife, he may have to pay them a cow in compensation. Even if her father and brothers support her husband, he cannot prevent her from running away again, and this time to some distant relative who is unconcerned alike whether the bridewealth is returned or what the husband's grievances and discomforts may be. Should he [586] decide to divorce her and marry again, he has first to get his cattle back—it is always doubtful whether he will succeed in doing so—and he has then to face two or three years as a bachelor before his new wife comes to live with him. Therefore he will only take this step if his wife shows that she is determined to leave him, or if she is incorrigibly lazy, dirty, foul-mouthed, quarrelsome, or wanton, and occasionally if she is barren. Even if she has these defects he may, rather than go through the tedious process divorce entails, let her depart and bear him children by other men. A man will seldom divorce his wife for adultery unless she is constantly unfaithful.

562 With rare exceptions, I found Nuer women well content with their station and that their husbands and other men treated them •[681] with respect. In saying that their status in society is high I am judging not so much by the fact that the same number of cattle have to be paid for the homicide of a woman as of a man, and I believe more for a young woman in some parts of Nuerland, but by the part women take in the daily life of the community. They mix freely and with easy assurance with the men, and they do not hesitate to argue with them about matters in which they are interested as women. They have as intimate relations as the men with the cherished cattle, share with them the life of the kraal, and enter the byres when they wish to do so.

595 In a polygamous family the relations between husband and wife are complicated by the husband's relations with his other wives. *Nyak*, a co-wife, in its verbal form means both 'to be a co-wife' and,

6: Evans-Pritchard E-5 (1931, 1936)1938
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312 drink. Each beast also soon gets to know its special trough and
233 when loosened or when returning from pasture at once makes for it, though when the camp starts there is often confusion, for if an animal approaches a trough that does not belong to its master it is driven away by the owner of the trough and cows are thus driven from trough to trough till they discover the right one and join the other cattle of their household which are drinking there.

[578] On the arrival of a new household at the camp their kinsmen allow them to use their troughs till they have dug their own wells. Frequent disputes take place over wells for a man guards his water jealously. While I was at Yik several persons near Muŏt tŏt were killed in a fight that started in a dispute about wells.

A boy is placed on duty to watch the troughs all day long and often he plants a thorn bush in the bed of the river near his troughs and throws some grass on its branches so that he may have a little shade in the heat of the day. The lad's main duty is to prevent the sheep and goats from drinking water at the troughs reserved for the cattle for the cattle do not like drinking after them and they foul the water. Sheep and goats either have their own troughs or are allowed to drink when the cattle have had their fill. But as they graze unattended near the camp they may return at any time and try to drink from one of the cattle-troughs. A boy who allows sheep
[681 and goats belonging to another household to drink the water drawn
593] for his father's cattle is in for a whipping from his elder brother. Even the crows are driven away from the precious water. The most other boys will do to warn a sleepy comrade that the water of his trough is being drunk is to sing out "*Caa lil o, caa lil*" and one constantly hears this refrain in the camp. When a boy sings this chant every lad looks to his troughs to make sure that it is not from them that water is being drunk.

312 No washing is allowed from the troughs and if a man wants a
[515] bath he must get a comrade to pour water over him at a well-side. Every care is taken to keep the water clean and the wells are frequently inspected. If the water is discoloured a man descends to the bottom,

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In giving judgement, a Nuer court will almost always specify the size and sex of the animal to be paid by the defendant. This is especially the case when the defendant is unable to pay immediately, for otherwise he will be expected to name and describe the exact animal he proposes to pay.

In most cases the nature of the claim will be clear to the reader from the context. The administrator who is concerned with the practical application of Nuer law will be wise to master these terms at the outset. The terms are also set out for easy reference in the Glossary at the end of this book.

## 2. AN INTRODUCTION TO NUER SOCIETY

### *Origin and History*

The Nuer call themselves *Naadh*,[1] which simply means 'people', '*kon nsi te Naadh*', 'we are the people of the People', an expression which is sufficiently descriptive for their own purposes and reveals their arrogant belief in their own superiority over other human beings. By other tribes they are often spoken of as Nuer, and to be explicit to the ignorant stranger they will sometimes say '*kon Nuere*', 'we are Nuer'. Their origin remains obscure. Nuer themselves merely say that their ancestors descended from the sky down a convenient rope or by means of an exceptionally large *ahot* (*Ficus*) tree which still grows in Jagei country in the centre of Western Nuer District, an area from which they all came. Other theories of their origin seem to me no less conjectural and in the absence of more convincing evidence, we may as well leave it at that.[2] Culturally they are very near to the Dinka, and the two languages have close affinities. They are clearly of the same stock, but it remains a mystery why the Nuer should have emerged as a separate people with comparative suddenness about the beginning of the nineteenth century, driven the Dinka out of so much of their country, seized so many of their women and cattle, and absorbed whole sections of Dinka into their own society. Their extraordinary vitality, expressed in a peculiar vivacity of speech, in physical courage and endurance, their arrogance and democratic outlook coupled with a most engaging sense of humour, make them outstanding among the peoples of the Sudan.

They are divided into a number of 'tribes', the tribe being the largest group which in the past had any real and permanent sense of corporate unity. Each tribe is further divided into segments and subsegments, each occupying a common territory with a common name. Administratively they are now divided into three Districts: Western

[1] Sometimes spelt *Nath*.

[2] See Evans-Pritchard, *The Nuer*, p. 3. Fr. J. P. Crazzolara's two recent books on *The Lotuho* (Missioni Africane, Verona, 1950–51) do not provide much further information on Nuer origins.

8:Howell E, G-5 (1942-1944)1954
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indemnification,[1] but is nowadays modified by the fact of enforcement of the law through the agency of Nuer courts.

### *Restitutive Sanctions*

Rules of conduct towards kinsmen and neighbours are upheld by these sanctions. If good relations are to continue, certain breaches of conduct usually require the payment of compensation. Adultery, as we have seen, requires six head of cattle for this purpose; bodily injuries require compensation in proportion to the seriousness of the injury and there are complicated scales laid down in tradition. Homicide requires the transference of forty head of cattle from the kinsmen of the killer to those of the deceased in order to restore the balance between them. Scales of compensation for wrongs can be quoted by the older generation of Nuer with surprising consistency, but this is an indication neither of rigidity of custom nor of constant application. Whether compensation was paid at all and, if paid, whether the scales were strictly followed, depended largely on the relationship of the persons involved. If a dispute arose between groups of people after a wrong had been inflicted on one of them, we have seen that their relationship in the social structure determined the likelihood of settlement. The sanctions for composition operated along lines of social cleavage, being less intense and therefore less effective the greater the structural distance. A man of one tribe could rarely hope to exact compensation for an injury inflicted by someone of another tribe unless there were other links between them which extended beyond the political limits of the tribe. Similarly an individual living within one primary segment would find it difficult to get compensation from an individual living in another primary segment unless there were other ties between them, usually kinship or marital ties, which made composition mutually advantageous. It also depended on the state of the relations obtaining between the two segments, for there was often a feud (*ter*) between them. These observations are less true of members of secondary segments, since the smaller the social sphere the greater the possibility that compensation would be paid, and would be also a matter of extreme expediency. The application of Nuer law was therefore relative to the social structure, and the extent to which it was followed depended on current relations of the social units concerned. It was unlikely that minor disputes involving the payment of compensation to wronged individuals would ever be settled so long as the communities with whom each was associated remained in a state of feud. The situation would be substantially altered if the feud itself was composed by payment of compensation (*thang*) between them. Composition of a feud was

[1] Homicide and bodily injury, defamation of character, infringement of rights in property, violation of rights in women, &c.

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therefore often followed by the settlement of other and less serious disputes.

In the absence of a legal system for the enforcement of the law, settlement was not easily achieved, and should the situation be such that the disputants were persuaded to come together, there had to be some basis upon which negotiations could be opened. The discussion had to begin somewhere, and an opening was made by reference to traditional scales of compensation which existed largely for that purpose.

There is some evidence that bloodwealth in the form of forty head of cattle was usually paid in full if it was paid at all. In this there was a distinct rigidity which is still maintained in the courts, and it seems that this is not only a result of the enforcement of the law of homicide by the Government. The reason is, perhaps, that the peaceful settlement of a feud required strong sanctions, and negotiations were not usually governed by such considerations as the availability of cattle; a large group of people was involved, and therefore cattle usually were available.

On the other hand compensation for injuries less than death and for other wrongs recognized as demanding indemnification is of a more individual nature, though this does not mean that it is not incumbent on kinsmen to assist in the collection of the cattle. It often happens that a man has not the necessary cattle to pay and, if his kinsmen will not help him, a compromise must be reached. For example, in a dispute over adultery, the wronged husband may eventually agree to accept only three head of cattle. Even though there may be little chance of getting the remainder, his face is saved because six head is the established custom and the rest will be due to him in the form of a debt. 'Saving face' is a primary consideration to the Nuer in the settlement of disputes.

This is true of the past as well as the present, and may be seen in the courts today. In its judgement the court orders that the wrongdoer shall pay the wronged so many cattle known to be in the former's possession. It will further order that the remainder shall be paid at a time when more cattle come into the possession of the wrongdoer; in other words, when some debt, which the defendant is usually called upon to state, is discharged to him; when bridewealth is paid for his sister or daughter or when some other obligation in cattle is fulfilled.[1] All these considerations are thrown into the issue, and a Nuer court is faced not only with the problem of judgement but also with an equally complex problem of execution.

[1] The discharge of one debt leads to a claim for another. This is another reason why litigation is increasing. As soon as a man is ordered by the court to pay, he will look around for some excuse to claim cattle from some other party. This sometimes happens immediately after judgement, so that execution often depends on the judgement given in the next case and so on.

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### *Traditional Scales of Compensation and the Formula of Compromise*

Whatever the sanctions for payment, either in full or in part, of the compensation recognized as traditional, the mere fact that Nuer are able to quote traditional scales of a complicated nature shows that methods of negotiation existed whereby a wrong could be righted and peaceful relations between individuals or groups could be restored. I believe that traditional scales represented a formula through which such negotiations could be opened and were a starting point from which a compromise could be reached. They provided a formula for compromise, but no more. Although, as will be seen later, these scales of compensation have acquired a greater rigidity both in amount and in consistency of application because they are now enforced by the courts, this element of compromise still remains.

### *Legal Procedures and Political Authority in the Past*

It is not the object of this book to describe how incipient legal procedures functioned in the past, if indeed any such procedures existed at all. There is insufficient evidence to justify any generalization, and it is probable that the extent of change in Nuer society, and particularly in the sphere of law caused by the establishment of Nuer tribunals, is already great enough to preclude any possibility of obtaining such evidence. Nuer informants are extremely vague as to how disputes were settled in the past because of the absence of any kind of formalized legal procedure and, above all, the absence of organized legal institutions with powers of coercion. It is sometimes difficult to believe that disputes were settled at all. In fact, they were settled when a combination of circumstances represented in the sanctions already described made it expedient for both parties to come to an agreement.

An act of homicide was instantly followed by a state of feud between the groups concerned. The situation demanded vengeance on the person of the killer or on any of his kinsmen, but, depending on historical circumstance and the conditions in which those groups lived, the need for vengeance could be removed by the payment of compensation. There was no organized political force to compel composition of a feud, but there was a recognized procedure for composition if it was expedient. This procedure, which is described in considerable detail later, centred round the functions of the Leopard-Skin Chief, the *kuaar muon* or *kwac*. This functionary had no political or executive authority to compel the warring parties to come to agreement and no force which he could call to his aid if the opposing parties had no wish to do so. It was, however, expected that he would make

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mainly to provide the dead man with a wife. Other claims must be met first. Of the forty head of cattle some go to the kinsmen in the manner already described, others go to the Leopard-Skin Chief and his assistants, still others are sacrificed, so that only between twenty and thirty are left for the 'ghost-marriage'. These are normally kept until they increase sufficiently to reach the mark of current bride-wealth, and may then be supplemented by other cattle to which the dead man would have had a claim were he alive. Nevertheless Nuer feel that the two payments should be equal; a life for a life or a wife for a life, a logical equation which is entirely consistent with the principles of their customary law.

### *Observations on the Effects of Government Policy*

Nuer are able to quote instances where compensation was paid and blood-feuds settled in the past before the advent of the present Government, but this does not mean that every case, or even the majority of cases, was settled. There is no doubt that blood-feuds, especially between tribal segments remotely related in terms of space and kinship, often continued for many generations, and the tradition of such feuds is still a source of political friction and a problem which faces the Administration today. Even when compensation has been paid and the ceremonies of composition performed the feud may break out again with renewed vigour. Generally speaking, the nearer the social relationship of the opposed groups, the greater the likelihood of permanent settlement. This observation applies theoretically, but only in the sense that in the initial stages feuds between less closely related groups were more likely to continue and no action be taken to bring about an agreement. In fact, they do not often continue nowadays because the Government intervenes and acts as a purely artificial and new medium through which hostile groups are brought together. Paradoxically enough, it is nowadays often the case that feuds between closely related groups are the most difficult to deal with. The reason is, I think, that feelings of hostility receive the permanent reminder of almost daily communication, while the primary sanction for composition, the threat of aggressive action by other groups, is much modified by the action of the Government in maintaining the peace.

The concept of punishment of the individual for offences which we, but not the Nuer, regard as criminal is another innovation which has had widespread repercussions. In cases of homicide capital punishment is sometimes inflicted and imprisonment or fine or both are always applied. Further, in cases of major conflict, fines are sometimes exacted on a collective basis, and in any case, even if the fine is inflicted on the individual culprit, it amounts to collective punishment because in Nuer society the principles governing mutual assistance in

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681 177 the collection of bridewealth, bloodwealth or other kinship obligations automatically come into operation. The fear of punishment is therefore a collective deterrent, and this, with the general realization that payment of compensation will invariably be enforced, has undoubtedly reduced the incidence of homicide. It has also to some extent had the effect of strengthening public opinion opposed to the use of violence, and people are likely to go to greater lengths to restrain their fellows. Conversely, the certainty of punishment and of the enforced payment of compensation has lessened the fear of retaliation and has resulted in a corresponding reduction in the force of those sanctions which make for the fulfilment of social obligations.

Although the concept of punishment inflicted by the State is alien to the Nuer, its introduction has not been difficult, and the deterrent effects are appreciated by chiefs and court members. In general terms, however, a European system of criminal justice is not always understood. Fratricide, for example, is considered a great wrong, and is one which is likely to shock Nuer deeply, but it does not demand any restitution or compensation. A man who kills his brother is injuring himself, and although this may demand a readjustment in matters of inheritance, he cannot pay compensation to himself. Moreover his action runs counter to the very basis of Nuer social sentiment and conflicts with their ideas of kinship solidarity. It is an act almost on a par with suicide, which is fraught with spiritual dangers to the surviving kinsmen. Fratricide is the negation of all social principles. The killer will have to undergo a complex process of ritual purification to appease the wrath of the ancestral spirits and to avoid the misfortunes which may follow, but he will not pay compensation to himself or his brothers. Similarly when a man kills his legally married wife he is causing an injury to himself, for he has paid cattle for her which will now never be returned. Again he will have to undergo ritual purification, will have to give a few cattle or other gifts to his relatives-in-law, but unless he has not completed the bridewealth payments, he will not have to pay compensation in the normal sense. In such circumstances the Nuer find the greatest difficulty in understanding why the Government should seek to punish the culprit, and a Nuer court will usually resist an attempt to do so. If the case is taken out of their hands by the formation of a Major Court under the Presidency of a District Commissioner or Judge, there is little comment and they will accept the sentence, but it would be difficult to persuade a Nuer court to pass sentence itself.

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671 178 Apart from the difficulties of understanding an alien system of justice, there are other factors which have had repercussions on the application of traditional Nuer law and in particular on the scales of compensation demanded for a wrong. It seems probable that with the absorption of Dinka elements and natural increase, human population

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is now much greater in relation to cattle than it was in the past. In addition, diseases have taken a heavy toll and the Nuer are unable to replenish their stock by raiding other tribes. As a result, bridewealth has decreased substantially, and Nuer have at one time or another felt that bloodwealth should be decreased in proportion. In most Nuer districts this has found its own level. In three of the then four Nuer districts the indemnity for homicide was reduced to only twenty head of cattle. This did not occur in Western Nuer District, where compensation remained at 40 head of cattle, but whether this was due to purely economic causes is not easy to discover. The Western Nuer have always had a reputation for being rich in cattle as compared to other Nuer tribes, though this is not entirely borne out by recent statistics. These changes have again been altered by recent legislation.

### *Recent Legislation Concerning Homicide*

At the Nuer Council meeting in 1945 it was generally agreed that compensation for homicide should be raised once more in those districts where it had been reduced, and should be standardized at 50 head of cattle, of which 10 should go to the Government as a fine. In the absence of a sufficiently strong body of public opinion opposed to violence and the taking of life it was felt that this action might serve as a greater deterrent among the Nuer. More remotely related persons would be called upon to subscribe and, since payment of compensation is now rigidly enforced, there would be greater efforts by the people to settle their disputes without resort to force. It must be stressed here that this argument, though put forward by the Administration, was fully understood and appreciated by the Nuer chiefs present at the meeting, and the majority voted for the increase in the indemnity. Yet the argument is itself a doubtful one. In Western Nuer District, where compensation was never reduced, fighting and bloodshed were more common and widespread than in other Nuer districts.

The increase of compensation may have widespread repercussions in other spheres. Captain H. A. Romilly, District Commissioner of Eastern Nuer District, writes:

> One of the main decisions reached at the Fangak Meeting of 1945 has been to standardize blood-money at 50 head of cattle and to adjust other compensations accordingly. In Eastern Jikany this has had two main results:
>
> (*a*) First it has put up bride-price, and a marriageable girl has even less say than before in whom she marries. The heads of families and chiefs are responsible for debts being paid off, so the girl is sold off to the highest bidder, regardless of her feelings. This naturally results in more elopements, adultery, and divorces and consequently an increase in litigation.
>
> (*b*) The second result of the increase in blood-money is the reluctance of the chiefs to break *mar* which is a system by which relations exchange cattle

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on the marriage of their female relatives. Previously, if relationship was distant, the chiefs would agree to no cattle passing and the 'breaking' of *mar*, but since the Fangak meeting chiefs are very reluctant to break *mar* as the more so-called relations there are available to collect blood-money, the better.[1]

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In connexion with the first repercussion mentioned by Captain Romilly, it would appear that the object of this legislation has been defeated. Not only is litigation increased in the courts, but the result has been an increase in the very kind of dispute—elopement, adultery, divorce, &c.—which is so often the cause of violence and bloodshed.

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The second result noted by Captain Romilly among the Eastern Jikany Nuer is not necessarily a social evil, as he seems to suggest, and indeed was one of the intentions of the action taken in raising the rates of compensation. We have seen that the social structure of the Nuer has been subjected to severe strains, and since social groups in the past were at least partially maintained as co-operative units by the retaliatory sanction and the need for mutual protection, a reduction in the incidence of violence and of blood-feuds has naturally tended to reduce group solidarity. The lessening of the retaliatory sanction has led to an excessive process of fission without the accompanying process of fusion. Unless this process is checked, or at any rate the speed of the process lessened, there is a tendency towards social decay and even chaos before a new form of social organization based on territorial factors and local government can be substituted. Captain Romilly of course refers to the consequent increase in litigation in the already overburdened courts because the retention of the widest range in *mar*, 'kinship', means a larger circle of people involved in relationships which demand mutual assistance and therefore an increased number of claims in a cattle exchange system.

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The Nuer courts which have been established by the Government are a form of machinery through which the social system is maintained. As I have explained previously, this has introduced a political authority upholding the customs of a social system, and custom therefore becomes law in a more precise definition of the term. Customary payments of compensation for wrongs (*duer*), normally only likely to be effective because of the fear of condemnation by a restricted community sentiment and a consequent loss of privilege and security, are now enforced as law. Cases are raised in the courts which would never have had the slightest chance of success in the past, and judgements are enforced because a too literal application of the traditional principles is made. A typical example of this is *nyindiet*. It seems likely that in the past *thung nyindiet* was only demanded in cases where the persons concerned were very closely related and then on a much reduced scale.

[1] Unpublished administrative records (Eastern Nuer District), 1945.

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community among the Nuer is relative, like the Nuer word *cieng*, which roughly describes a territorial and social unit whatever the size,[1] we can still safely say that there was little or no public law among the Nuer in the past.

The sanction, even for the most serious of offences, homicide, was retaliatory, requiring only an act of vengeance against the killer or any one of his kinsmen, and thereby maintaining the balance and satisfying the indignation of the kinsmen of the deceased. Alternatively restitution might be made, the payment of which fell not individually on the killer but again on all his kinsmen and which, though primarily directed to providing the dead man with a wife, thus to raise children and restore the balance, was in part divided among the dead man's kinsmen. This division, which still applies today, is itself of particular significance for it shows that the cattle paid as 'blood-money' are in no sense merely a punishment or punitive damages inflicted on the group of the killer, but are primarily directed to the restoration of the balance between them and the group of the deceased. This balance is disturbed by the act of homicide, and the two groups or segments of a tribe are at once in a state of feud (*ter*) and will suffer spiritual pollution if the ordinary contacts of daily life continue between them. They are the *ji ran*, the 'people of the (dead) man', and the *ji thunge*, 'the people of the compensation', and between people in this condition social intercourse is not only unsafe, because at any time an act of vengeance may happen, but also spiritually dangerous. There is therefore a disturbance of equilibrium, which finds expression, on the one hand, in the feeling of intense indignation—often, as we have seen, more conventional than actual—of the dead man's kin and, on the other, in the fear on the part of the killer's kinsmen that violent retaliation may follow. Between them there is the fear of mutual contamination.[2] The balance is restored by the performance of ritual, the purpose of which is to remove the danger of this spiritual contamination, and by the complicated processes of payment of 'blood-money', the main object of which is to remove the feeling of indignation of the *ji ran* by giving them compensation in cattle for their loss. That this loss extends to a group larger than the immediate family of the dead man is seen in the fact that a small portion of the compensation is paid to his maternal relatives, the distribution following a pattern which is similar, though much restricted, to the distribution of bridewealth. The majority of the cattle go to provide a 'ghost-wife' for the dead man, thus assuring the continuance of his line in the lineage structure and also the unimpaired continuance of that lineage as a whole. There is nothing in these processes which

[1] The Nuer *cieng* has already been discussed; see pp. 21–22.

[2] It may be argued that the fear of contamination and the consequent avoidance are only a psychological expression of the fear of retaliation.

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may be described as public law. There is no evidence of a penal sanction applied by anything which resembles 'politically organized society', nor anything which indicates that such procedure is enforced by the will of the community; the community, that is, which extends beyond those segments which are actually at feud. Nor again can the Leopard-Skin Chief, the functionary through whom the ritual and compensatory processes may be successfully carried out, be described as a 'constituted representative of political authority', for there is nothing behind him to enforce a decision other than a vague and not very effective sanction in his power to curse. It is only when both parties are willing to negotiate that his particular functions are effective.

A further point of significance is the fact that the Nuer distinguish between intentional and accidental killing. It might well be argued that, since they make this distinction, there is at least an element of the idea of punitive damages contained in the scales of compensation according to the circumstances of homicide. I do not think this is so for two reasons. In the first place the Nuer often say that there really should not be any distinction at all. In the second place it seems that the variations spring from an original principle of compromise. The indignation of the *ji ran*, the dead man's kindred, is undoubtedly affected by the motives of the killer, and is likely to be less intense if there is no motive at all. In the past a compromise at a lower figure was therefore more probable. Since then there have been many homicide disputes from which precedents have arisen, and many of these were due to the direct influence of administrators at the time. Precedents of this sort have now become standardized by usage and, recently, by formal recognition at the Nuer Chiefs' Council; there is now a complicated body of laws concerning homicide which are consistently applied.

In the past, then, the outcome of blood-feuds depended on the social relations of the groups involved, even though the division over these events might follow the lines of segmentation until a whole tribe was split. There was no all-inclusive community within which an act of homicide could become a public delict, nor any political association outside the parties concerned sufficiently institutionalized to enforce a decision. There was only a traditional procedure by which the affair could be settled if both parties were willing.

Similarly other legal wrongs required the payment of an indemnity to the injured party and, since the individual does not stand alone or acquire rights except as a member of an integrated kinship group, we may say that this action, though less collective in extent than the composition of homicide, was directed to the re-establishment of the balance between the groups concerned. If the maintenance of the balance was not necessary, either because the two individuals were closely related and the disturbance was in consequence less acute, or

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681 621 because the groups concerned were too remotely connected, the likelihood of composition was small. In the first instance the indemnity was not paid, or was paid on a much reduced scale; in the second instance it was not paid at all. Again, analysis of the concepts which concern sexual congress of persons between whom such relations are forbidden shows that such offences are not treated as public delicts. [684] Adultery requires the payment of an indemnity in cattle, and we have noted that some of these cattle are regarded as direct compensation for an infringement of marital rights in the wife, while one in particular is an expiatory payment necessary to remove the pollution which results and to rectify any impairment of the husband's ritual status. There is no evidence of public law here. Even a breach of the laws of exogamy, which, among some African tribes, is followed by a reaction of moral indignation and organized action against the culprits, is not a public delict among the Nuer. Certainly no punitive action is taken against the guilty parties even though all their kindred are subjected to considerable spiritual danger. The sanction here is supernatural, and although the pollution caused by such an act may extend beyond the principals to persons who are related to them, penal sanctions are not applied. Moreover such offences are relative in gravity according to the proximity of relationship between the principals. Even in the most serious breach the contamination (*nueer*) may be removed by the performance of the prescribed ritual, which is considered effective and in which the Nuer have considerable confidence.

[685] We have also considered theft. Here, in the case of material possessions of a certain type, all of which had an exchange value in cattle, the Nuer tell us that damages could be claimed which appear much in excess of the current value. This certainly suggests a concept of punitive damages; but further analysis shows that compensation was directed again to the restoration of equilibrium. The disturbance had been considerable, not only because articles of this nature had a high intrinsic value owing to their scarcity and the difficulty in obtaining them, but also because their loss might cause severe economic hardship to the individual and to his family group, and perhaps to a wider circle of associates in the subsistence economy. It is doubtful, in the absence of any institutionalized body to enforce payment, whether compensation was ever paid on the high scales which the Nuer tell us are traditional but, whatever the circumstances, it is clear that theft was not considered a public delict.

681 621 683 The only form of procedure which might fall within the category of public law was the repressive action taken against witches and ghouls. Although the Nuer themselves say that this action was sometimes taken and, in quoting instances in their history, refer to individuals who have at least an established position in known genealogies,

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there is no documented evidence, and we are again approaching a subject which is a matter of conjecture. It may be presumed, however, that violence probably resulting in death was sometimes used against persons who had acquired such an evil reputation that their continued existence in the community became intolerable. Nuer tell us that in the case of ghouls (*rodh*) no indemnity would be demanded by the dead man's kinsmen, and only a much reduced indemnity in the case of possessors of the evil eye (*peth*), and sometimes magicians (usually *tiet*) who were alleged to have used their powers for strictly anti-social purposes. This does not necessarily suggest that anything in the nature of organized or concerted action was taken but that the act of revenge on the person of a witch by an individual, or a few individuals who supported him, was condoned by public opinion to such an extent that the kinsmen of the deceased dared not retaliate, or perhaps themselves condoned the act, considering themselves well rid of a dangerous factor within their own lineage. At any rate a blood-feud was unlikely to follow, and although vague statements of this kind must be substantiated by actual examples[1] before any definite conclusion may be drawn, we might be justified in saying that here at least is the germ of public law.

### *Trends and Changing Conditions: the Transformation of Custom into Law*

We have seen in the introduction and throughout the descriptive passages of this book that among the Nuer there are recognized rules of conduct which find expression in the terms *cuong*, 'right', and *duer*, 'wrong'. These concern the relations of one Nuer with another and, since the individual cannot be considered in isolation, one group with another. The distinction between custom and law has also been mentioned. The term 'law' is sometimes used of all processes of social control, and by this definition any of the obligations, customary actions, and conventions inherent in the social system might be described as law. It is less confusing to adopt the hypothesis that the extent of the law is limited to social control which is maintained by organized legal sanctions and applied by some form of organized political mechanism. By this definition, the Nuer had no law, for, as we have already seen, there was in the past nothing in the nature of politically organized society. There were in a sense courts of arbitration dependent on the person of the Leopard-Skin Chief, but resort to this functionary only occurred if both parties were willing or found it expedient to do so, and there was certainly no means through which a judgement could be enforced even if it was given.

On this subject, Professor Evans-Pritchard has written:

[1] It is perhaps now too late to collect reliable evidence on this subject.

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In a strict sense Nuer have no law. There are conventional compensations for damage, adultery, loss of limb, and so forth, but there is no authority with power to adjudicate on such matters or to enforce a verdict.[1]

When this statement is applied to the past, no criticism can be made. So far as it is now possible to discover what happened in those days, we may safely say that arbitration only occurred when it was expedient for both parties to submit to it. We may also conclude that the conventional compensations referred to were in the nature of a formula for compromise. A start in the negotiations had to be made with reference to some scale, especially when the disputants were under the stress of heated emotions, but although such scales have a traditional consistency, there was no constancy or rigidity of application. Finally we may say that there was no mechanism for enforcement should either party refuse to continue negotiations at any stage of the proceedings.

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Professor Evans-Pritchard goes on to say:

The recent introduction of Government courts, before which disputes are now sometimes settled, in no way weakens this impression, because one well knows how among other African peoples cases are brought before courts under Government supervision which would not previously have been settled in a court, or even settled at all, and how for a long time after the institution of such Government tribunals they operate side by side with the old methods of justice.[2]

This was written of the Lou Nuer as they were some twenty years ago, and the rapidity with which Government tribunals have developed since then is considerable. If it is argued that these tribunals are now applying the law beyond the limits of reality in the past, this statement is entirely true. If it is argued that the courts are administering a system of law which has no foundation in tradition at all, the statement is less true, though it is manifest that there are many innovations which are the result of an evolution of case law based on precedents, some of which are the natural development of Nuer ideas, some of which are due to the direct intervention of the Government. Rules of behaviour administered in the courts are none the less law, provided they are administered consistently on recognized principles and are enforced.

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We have considered almost all those aspects of Nuer life which are subjects of discussion and dispute in the courts today: homicide and bodily injury; marital relationships, rights, and obligations; divorce and dissolution of marriages; the legitimacy of children; violation of rights in women; the infringement of grazing and fishing rights; theft and the misappropriation of property; witchcraft and other nefarious practices. In the past the sanctions for conformity with rules of conduct and for the composition of wrongs, if a breach of those rules

[1] Evans-Pritchard, *The Nuer*, p. 162. [2] Ibid.

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occurred, were forceful retaliation or self-help; social reprobation within the community and unpopularity, loss of prestige and privilege, and so on. The force of these sanctions was neither constant nor continuous, but they were certainly effective in some instances. The sanctions were variable and their effect was relative to the position in the social structure and the actual daily proximity of the persons concerned, and depended also on the political relations prevailing between the tribal segments to which they belonged. Nowadays these matters are to a greater or lesser degree brought before the courts and a settlement is enforced. Customary procedure has become law in the more precise definition.

This may be attested by reference to the examples already recorded in detail. It is, for instance, customary, on the death of a wife who has not fulfilled the required procreative obligations, for the bridewealth cattle to be returned to her husband, thus dissolving the union, though the wife's family may usually claim certain deductions. The Nuer regard this procedure as logical and correct, though it is doubtful whether it was followed in the past, especially as the dissolution of marriages appears to have been less frequent or even impossible after some years of marriage had elapsed. If the marriage is not dissolved, either because the husband does not wish it or because the wife has already borne sufficient children to stabilize the union for all time, her family may be expected to assist the widower by payment of certain cattle (*ghok tuoke*), which will be used to feed the children or to enable him to marry again so that 'there may be a mother in the home'. This may be regarded as a matter of custom, for in the past the payment doubtless depended on the terms on which the husband and his dead wife's family continued to live. This is also true today and most situations of this sort call for no dispute. If this custom becomes a subject for litigation and appears before a court, payment may be enforced. The court will begin by saying to the wife's family that it is customary to give *ghok tuoke* in such circumstances and that the husband is in the right: *teke cuong*, 'he has a right'. They are taking as a criterion what a reasonable Nuer may be expected to do in similar circumstances, and will call upon the wife's family to conform to that criterion, but, after persuasion, they will in the final event enforce this decision with the threat of punishment if it is not followed. To quote another example: in marriage, it is customary for the bride's father's age-mate to receive a cow called *yang ric*. The special relationship between the bride's father and his age-mate, and symbolically the intimate association of all age-mates, is thus socially recognized. If questioned the Nuer would undoubtedly say that the age-mate has a right (*cuong*) to this cow. Further, there are three different sets of people involved in this transaction. In the first place the bride's family are concerned with

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in such matters is not always consistent and certainly not equally effective. Moreover there is still everywhere a reluctance to give anything in the nature of a judgement. In many disputes, where the rights of one or other of the disputants are abundantly clear, a rapid and clear-cut decision might be expected. This is rarely forthcoming. Argument swings from one side to another during the course of the proceedings until agreement is reached. When a compromise is not reached to the satisfaction of both complainant and defendant, although the decision is recorded in the court registers, execution is often avoided even though the guilty party is well able to pay the cattle demanded. More often still an appeal is lodged. A dispute frequently passes through all possible stages of litigation; from preliminary negotiations, in which the elders of the community may be consulted, to appearance before the tribal court, to appeal court.[1] Even then there are many instances where attempts are made to bring the same case again and again. This lack of finality is a distinct characteristic of Nuer litigation.

Nevertheless, the general and most obvious effect of administration in the form and application of what we may now call Nuer law is, as already stated, on its relativity. Here we must make a further distinction, because Nuer courts are in fact operating in two different ways. In the first place they are upholding a network of positive obligations inherent in the social system, and in this sense they are becoming more and more the sole mechanism through which the social system is maintained. In the second place they are the means through which definite legal wrongs are righted. A man who does not fulfil a particular duty towards a kinsman may now be brought before the courts in just the same way as one who has infringed a specific right. More and more of what can only be described as custom, convention, or even usage finds its way into the arena of the courts and is applied as law. Evidence of this may be seen in the growing amount of litigation which appears before the courts. The Nuer are pressing, through this means, claims for the fulfilment of obligations which were not in the past normally subjects of dispute at all. There is another reason for this increase in litigation. Paradoxically enough, although there is now greater certainty of obtaining redress through the agency of the courts, the sanctions which in the past made for greater conformity with accepted patterns of behaviour, have themselves been modified by the very existence of the court system, which aims at the maintenance of public security. For example, a man may nowadays commit adultery with another man's wife with the knowledge that he will at least escape death or severe injury at the hands of her husband, even though he knows that detection will almost

[1] Branch and Main Courts. See Appendix II.

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certainly mean that he will be called upon to pay compensation and forced to comply. In the past there was no certainty that he would be compelled to pay compensation, but there was always present a real danger of vindictive retaliation, and the latter sanction appears to have been more effective in the past than the former is in the present. For this reason adultery is a more common offence than it was, or so the Nuer say, and here again there is an increase in litigation.

We find, then, that the establishment of the courts, though in one sense preserving the social system from complete breakdown, is in another sense contributing to social maladjustment. Moreover the establishment of courts with powers of coercion behind them tends to stimulate litigation because the courts provide a mechanism through which claims may be pressed which, by reason of the social or spatial distance between the parties concerned, would formerly have had little or no chance of success. In other words, claims in the courts receive the sanction of alien authority which has a wider range than the sanctions which previously made for their fulfilment. The relativity of application is now fast disappearing. We find at one end of the scale increased litigation due to the enforcement of claims which in the past could have had no legal reality. At the other end of the scale we find the modification of sanctions which in the past would have ensured unquestioned fulfilment of reciprocal obligations; a modification which leads to social disintegration of which increased litigation is a symptom. In the first place the Nuer are bringing before the courts actions which previously would have stood no chance of settlement. In the second place the obligations of social existence are more and more maintained only by direct action through the courts. The problem of increasing litigation is a serious one. It is one of the basic problems of administration among the Nuer.

### *'Balanced Opposition' in the Court System*

In the past each social unit of Nuerland existed largely in opposition to other units. The need for common defence, mutual co-operation, and collective enterprise in economic activities were the principal factors which maintained the identity of territorial groupings, the relation between the territorial and political aspects being expressed in kinship terms. Each tribe, each tribal segment, each local community, was identified with a dominant clan or lineage. These formed the nucleus of groups of people not otherwise related, and links were forged between them on a kinship analogy. Such cohesion, which was not in any case constant, was therefore the result of the interaction of several factors. Although the Nuer were involved in aggressive warfare with the Dinka during the period of their expansion westwards in the last century, it is clear that tribal segments

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rights of others, may be punished by fine or imprisonment. Moreover certain legal wrongs, which in the past were never more than private delicts and were composed by the payment of compensation aimed at the restoration of this balance, are now becoming criminal offences in a more exact definition.

Under the influence of the Administration over the last twenty years or more the Nuer, as represented by their local authorities, are rapidly becoming conscious of the value of punishment as a deterrent. Court members will sometimes say that they are punishing a man both because his action has been detrimental to society as a whole and has created a disturbance, and also because such disruptive actions must be checked. Public opinion as a whole is not advancing very rapidly in this respect, and it is significant that there is still no social stigma attached to imprisonment. The average Nuer does not understand why imprisonment should be inflicted at all, especially if compensation is also paid to the injured party. This is apparent, but it is perhaps worth while to consider this attitude in connexion with certain offences. We have already noted that the Nuer cannot understand why a man should be punished for killing his wife.[1] The damage done has been done to himself, and though he must make peace with his ancestral spirits, for he has sinned against the whole concept of kinship and the continuity of the lineage, and must pacify his wife's relatives with gifts and acts of atonement, nothing more should be demanded of him. His act, like suicide and fratricide, is the negation of the basic principles which underlie kinship. He has used the cattle of his lineage to marry a wife, he has killed her, lost the cattle, and compromised his position in posterity. His act is reprehensible enough for these reasons, but why should he also receive punishment at the hands of the Government? Similarly, an act of adultery requires an indemnity to be paid to the man whose rights have been infringed. Once paid, what need is there for fine or imprisonment? This is a general attitude, even though punishment is so frequently applied that the Nuer have come to expect it and even demand its application to those who have transgressed against them.

When we come to analyse the position more closely, however, we find that there are few offences which can yet be classified as criminal. Homicide and bodily injury are the main exceptions to this observation. Murder is often punished by death and other forms of homicide are now settled by the payment of fifty head of cattle.[2] Forty of these go to the kinsmen of the deceased in the traditional manner, but ten go to the Government and must be called a fine. In addition, unless there are exceptional circumstances which mitigate the offence, the killer is sentenced by the court to imprisonment for a period varying from one to six years. Though in the early stages of administration

[1] See p. 62. [2] See pp. 63 et seq.

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692 this was usually inflicted by the District Commissioner sitting as a magistrate, or by the court on the advice of the District Commissioner, 681 this form of sentence is now imposed almost automatically. Yet although there are clearly some Nuer chiefs who realize the value of imprisonment as a deterrent, the majority would not impose such a sentence without pressure from the administration. Moreover such punishments are often inflicted without due consideration of the circumstances of the case, and it is symptomatic of the general attitude to punishment that court members have a habit of asking for fixed sentences to be laid down for specific offences. It is, indeed, one of the problems of the Administration to explain to the Nuer that, though there may be a maximum penalty for an offence, this need not necessarily be applied. The reason is that, although Nuer chiefs and court members may be aware of the value of punishment, they are still reluctant to inflict it, especially as they are often subjected to recrimination by their fellows after the case is over. A fixed penalty absolves them from this and throws the responsibility on the Government. Nevertheless homicide and hurt must now be classed as criminal offences among the Nuer because they are habitually treated as such, albeit under protest. This observation may be applied also to theft.

[687] In other offences in which punishment is sometimes but not always applied, we find that it is not usually the offence itself which is treated as a criminal action but the offender's action in disobeying the orders of the local authorities or the court. The punishment is inflicted for the defiance of authority by the offender rather than for the offence he had originally committed.

681 It is also clear that the introduction of penal sanctions has sometimes led to a curious mixture of legal concepts. For example, adultery 684 is, as we have already seen, an offence which is normally compounded by payment of compensation to the wronged husband. Even though offenders are sometimes punished for persistent attention to the wives of others or for flagrant defiance of the orders of their chiefs, adultery remains essentially a private delict. For the reasons already described,[1] if a divorce follows an act of adultery, it is a fundamental principle among the Nuer that the compensation cattle must be returned to the adulterer and should not be retained by the woman's husband, who would otherwise pass them to her family. To do so is to risk a confusion of legal status which Nuer law seeks to avoid. Owing to a recent decision by the Council of Nuer Chiefs, these cattle must now be paid to the Government and thus become a fine. Adultery, initially a private delict, becomes a public delict, and a criminal offence should 671 the husband decide to dissolve the union subsequently. There is 177 therefore growing up a curious admixture of traditional Nuer law, which in basis and principle is essentially private law, and European

[1] See pp. 166–8.